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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2011 APR 22 AM 11:00

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In re:

Duane Schmidt,

Respondent

P & S Docket No. D-10-0205

Decision Without Hearing
by Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), hereinafter the Act, by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondents have willfully violated the Act. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (Rules of Practice) applicable to this proceeding (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in paragraph I of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Duane Schmidt (hereinafter Respondent) is an individual, whose business mailing address is 19502 427th Avenue, Bancroft, South Dakota 57353.
2. Respondent, at all times material herein, was:
 - (a) Engaged in the business of buying and selling livestock in commerce for his own account as a dealer; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

Conclusions

Respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, the decision will be entered.

Order

1. Respondent, his agents and employees, directly or through any corporate or other device, in connection with activities subject to the Act, shall cease and desist from:
 - (a) Failing to pay, when due, the full purchase of livestock as required by Section 409 of the Act (7 U.S.C. §228b).
2. Respondent shall be assessed a civil penalty of \$2,500.00.

The provisions of this Order shall become final and effective on the sixth (6th) day after service upon Respondent.

Copies of this Decision and Order shall be served upon the parties.

Issued in Washington D.C.

this 22nd day of April, 2011

[Redacted Signature]

Administrative Law Judge

[Redacted Signature]

Marcene J. Smith, Esq.
Attorney for Respondent

[Redacted Signature]

Brian P. Sylvester, Esq.
Attorney for Complainant